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5 **UNITED STATES DISTRICT COURT**6 **DISTRICT OF NEVADA**
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8 GERALD ERWIN, et al.,

9 Plaintiffs,

10 v.

11 WELLS FARGO BANK,

12 Defendant.
13

2:15-cv-01396-LDG-GWF

ORDER

14 Defendant Wells Fargo has filed a motion to dismiss (#9, opposition #12, reply #13). It is
15 undisputed that plaintiffs elected to participate in foreclosure mediation, and that the mediation
16 statement and agreement was dated November 24, 2014. Plaintiffs' complaint filed in state court
17 on June 19, 2015, seeks relief based on defendant Wells Fargo Bank's alleged contractual and
18 tortuous breach of the implied covenant of good faith and fair dealing, declaratory judgment and
19 injunctive relief all stemming from Wells Fargo's failure to mediate in good faith under NRS
20 107.086(6) during three foreclosure mediation attempts.

21 Challenges to the conduct of a party in mediation must be made in a petition for judicial
22 review within thirty days of notice that a mediation certificate would or would not issue. "A party
23 to the mediation may file a petition for judicial review with the district court in the county where
24 the notice of default was properly recorded." Foreclosure Mediation Rule 22(2). "All such
25 petitions shall be filed within 30 days of the date that the party to mediation received the
26 notification of the issuance or non issuance of a certificate." FMR 22(3).

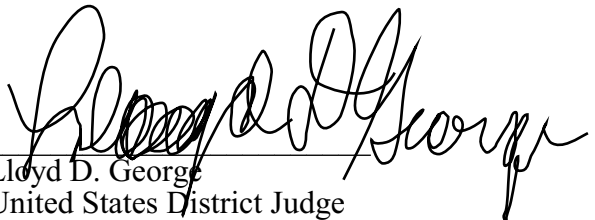
1 The petition for judicial review affords a way to challenge compliance with the statutory
 2 attendance, production and good faith requirements . . . And exists ‘for the limited
 3 purposes of determining bad faith, enforcing agreements made between the parties within
 the Program, including temporary agreements, and determining appropriate sanctions
 pursuant to NRS Chapter 107 as amended.

4 Holt v. Reg'l Trustee Serv. Corp., 266 P.3d 602, 606 (Nev. 2011). See also Pasillas v. HSBC
 5 Bank USA, 255 P.3d 1281, 1286 (Nev. 2011) (“If any one of these violations occurs, the mediator
 6 must recommend sanctions. If the homeowner petitions for judicial review, “[t]he court may issue
 7 an order imposing such sanctions against the beneficiary of the deed of trust or the representative
 8 as the court determines appropriate”) (citations omitted).

9 Wells Fargo submits that plaintiffs’ complaint fails as a matter of law because plaintiffs
 10 did not comply with the foreclosure mediation rules by filing a petition for judicial review within
 11 30 days of the issuance of the mediation statement. The court agrees. Plaintiffs’ claims fall
 12 squarely within the scope of a petition for judicial review required under the foreclosure mediation
 13 rules. The court is further unpersuaded by plaintiffs’ argument that the onus is on Wells Fargo,
 14 not plaintiffs, to file for judicial review. The allegations of plaintiffs’ complaint are based on
 15 Wells Fargo’s bad faith, and it is the mechanism of the petition for judicial review which
 16 addresses such a violation.

17 THE COURT HEREBY ORDERS that defendant Wells Fargo’s motion to dismiss (#9) is
 18 GRANTED.

19 DATED this 31 day of March, 2016.

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 22 Lloyd D. George
 United States District Judge
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